

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MARK F. BEVAN, M.D.,

02 DEC 12 AM 9:05

Plaintiff,

v.

CV-02-1483 LH RLP

MLK

DAVITA INC., d/b/a TOTAL RENAL
CARE, INC., and d/b/a TOTAL RENAL
CARE HOLDINGS, INC. and TRC-FOUR
CORNERS DIALYSIS FACILITY, L.L.C
(named as a nominal party only),

Defendants.

NOTICE OF REMOVAL

Defendant DaVita Inc. hereby gives notice of the removal to this Court, pursuant to 28 U.S.C. § 1441, of the above captioned action pending in the Eleventh Judicial District Court, County of San Juan, State of New Mexico, as Cause No. CV-2002-1116-

3. In support thereof, Defendant DaVita Inc. states as follows:

1. On December 2, 2002, Plaintiff Mark F. Bevan, M.D., filed his Complaint seeking damages and injunctive relief against DaVita Inc. and TRC-Four Corners Dialysis Facility, L.L.C. (named as a nominal party only) in the Eleventh Judicial District Court, County of San Juan, State of New Mexico. A copy of the Complaint is attached as Exhibit "1".

2. In addition to the Complaint, Plaintiff has filed a Motion for Temporary Restraining Order and Preliminary Injunction, with supporting Affidavits (attached hereto as Exhibit "2"), a Memorandum Brief in Support of Motion for Temporary Restraining Order and Preliminary Injunctive Relief (attached as Exhibit "3"), and a Motion for Protective Order to File Affidavit of Plaintiff Under Seal (attached as Exhibit "4") with a

Protective Order to File Affidavit of Plaintiff Under Seal (attached as Exhibit "5"). Because of the Protective Order (Exhibit "5") requiring that the Affidavit of Plaintiff be sealed and not be disclosed or made part of the public record, that Affidavit is not being filed with this Notice of Removal, but will be filed as soon as appropriate arrangements can be made to allow filing of the Affidavit without violation of the existing Protective Order (Exhibit "5"). A recusal by the assigned District Judge, Byron Caton, is attached as Exhibit "6", and an Emergency Motion to Assign Judge is attached hereto as Exhibit "7". A Notice of Judge Assignment is attached hereto as Exhibit "8". A Notice of the hearing for the Temporary Restraining Order for "Thursday, December 13 [sic], 2002" is attached as Exhibit "9". These comprise all of the pleadings received by Defendant DaVita Inc. to date.

3. This Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1332(a) and supplemental jurisdiction pursuant to 28 U.S.C. § 1367. This action may, therefore, be removed to this Court pursuant to 28 U.S.C. § 1441.

4. Venue is proper in this district because the cause of action on which this matter is based arose in this district.

5. The Complaint alleges that Plaintiff Mark Bevan is a resident of the State of New Mexico, and he is, on information and belief, a citizen of the State of New Mexico.

6. Defendant DaVita Inc. is a corporation organized under the laws of the State of Delaware with its principal place of business in California.

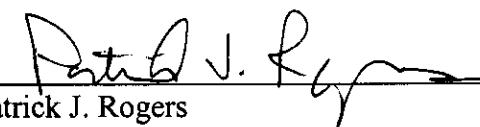
7. The other named Defendant, TRC-Four Corners Dialysis Facility, L.L.C. ("TRC-Four Corners") is, as the Complaint states, "named as nominal party only." It is a

day suspension of his privileges there, exceeds \$90,000. Punitive damages are demanded. In addition, Plaintiff also seeks damages for the loss of his reputation, which is presumably worth more than a nominal sum, as well as damages for unfair trade practices, which pursuant to New Mexico law entitles him to treble damages plus attorneys' fees. *See Section 57-12-10, N.M.S.A. (2000).* The total potential damages is well in excess of \$75,000, and this Court, therefore, has subject matter jurisdiction of this case pursuant to 28 U.S.C. §§ 1332(a), 1367 and 1441.

11. Pursuant to 28 U.S.C. § 1446 (b), this Notice of Removal is filed within thirty (30) after the service and receipt of the Complaint by DaVita Inc.

12. Pursuant to 28 U.S.C. § 1446(d), Defendant DaVita Inc., has filed its Notice of Removal with this Court and is sending copies of the Notice of Removal to Counsel for Plaintiff and to the Clerk of the Eleventh Judicial District Court, County of San Juan, State of New Mexico, for filing.

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By: 

Patrick J. Rogers
Attorneys for Defendant DaVita Inc.
Post Office Box 2168
Bank of America Centre
500 Fourth Street NW, Suite 1000
Albuquerque, New Mexico 87103-2168
Telephone: 505.848.1800

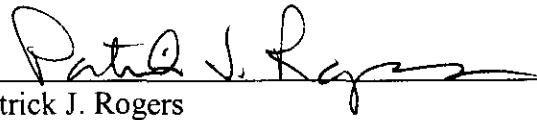
Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing Notice of Removal was mailed and faxed to counsel of record, as indicated below, this 12th day of December, 2002.

Felix Briones
B. Paul Briones
Briones Law Firm
333 East Main Street
Farmington, NM 87401

Jeffrey C. Clark
Ross& Hardies
150 North Michigan Avenue, Suite 2500
Chicago, IL 60601

Weldon J. Neff
Clerk of the District Court
Eleventh Judicial District
103 South Oliver Drive
Aztec, NM 87410



Patrick J. Rogers

**THE EXHIBITS ATTACHED TO
THIS PLEADING ARE TOO
VOLUMINOUS TO SCAN. SAID
EXHIBITS ARE ATTACHED TO THE
ORIGINAL PLEADING IN THE CASE
FILE WHICH IS LOCATED IN THE
RECORDS DEPARTMENT, U.S.
DISTRICT COURT CLERK'S
OFFICE...**